

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of )

Fees for Ancillary or Supplementary )  
Use of Digital Television Spectrum )  
Pursuant to Section 336(e)(1) of )  
the Telecommunications Act of 1996 )

MM Docket No. 97-247

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TO: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

REPLY COMMENTS OF THE BUSINESS SOFTWARE ALLIANCE

The Business Software Alliance ("BSA") hereby replies to the comments received on the Commission's *Notice of Proposed Rulemaking* regarding the assessment of fees for the provision of ancillary and supplementary services.<sup>1/</sup> BSA, whose member companies are leading producers of personal computer and client server software,<sup>2/</sup> agrees with those commenting parties who advise the Commission to tread cautiously when designing a method of collecting fees for ancillary and supplementary uses of the digital spectrum. BSA files these reply comments to urge the Commission to adopt a fee structure that encourages innovation and investment in the ancillary and supplementary services market.

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<sup>1/</sup> *Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, MM Docket No. 97-247, FCC 97-414 (released December 19, 1997) (the "Notice").

<sup>2/</sup> BSA's Policy Council consists of the following entities: Adobe Systems, Inc.; Apple Computer, Inc.; Autodesk, Inc.; Bentley Systems, Inc.; Compaq Computer Corp.; IBM/Lotus Development Corp.; Intel Corp.; Intuit; Microsoft Corp.; Novell, Inc.; Subase, Inc.; and Symantec Corp.

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As the majority of commenters recognize, the rollout of digital television is in its incipient stages and, therefore, the Commission can only speculate about the amount of revenues that might be derived from ancillary and supplementary uses on digital television channels. In light of the difficulty in valuing the digital spectrum, it is incumbent upon the Commission to proceed with care in order to avoid setting fees at a level that would discourage broadcasters from developing additional services. The Commission highlights this reality in the *Notice*:

The means of assessing a fee may affect whether ancillary or supplementary services are offered at all and which services are offered. A fee set too high would serve as a disincentive for broadcasters to provide feeable ancillary or supplementary services. It could reduce the benefits that consumers receive from services provided on the DTV capacity.

*Notice*, at ¶ 11.

BSA urges the Commission to set the fee for ancillary and supplementary services on digital spectrum at a level that will encourage growth of new products and services. The lower the fee, the greater the incentive broadcasters will have to experiment with new uses for broadcast channels and, as the Commission notes, "the more flexible the broadcaster may be in serving audience demand for services and in choosing the mix of services it provides."<sup>3/</sup> Flexible use of the digital spectrum will foster greater technological innovation, which, in turn, will have long-term benefits and

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<sup>3/</sup> See *Notice*, at ¶ 4 (quoting *Fifth Report & Order*, 12 FCC Rcd 12806, ¶ 29 (1997)).

provide better choices for consumers.<sup>4/</sup> For these important reasons, BSA urges the Commission to err on the side of low fees when formulating its fee program.

In addition to the need to set the fees for ancillary and supplementary services at low levels, the Commission should craft a fee program that avoids the administrative, enforcement, and accounting costs of the other proposed fee structures. As the Commission emphasizes in the *Notice*:

In order to minimize th[e] burden both for broadcasters and for the Commission, the fee should be simple to understand and be calculable with readily available information. An overly complex fee program could be difficult to calculate and enforce and could create uncertainty that might undermine a DTV licensee's business planning.

*Notice*, at ¶ 9. BSA agrees with the majority of commenting parties that a fee based on a percentage of gross revenues is the least complex of the alternatives discussed by the Commission and, therefore, is the least likely to discourage the development of new uses for broadcast channels.<sup>5/</sup> And BSA endorses those commenters who advocate establishing a fee at a very low percentage rate, such as one or, at the most, two percent

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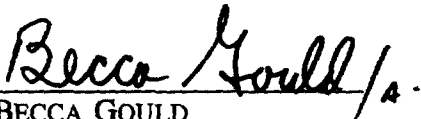
<sup>4/</sup> As the Administration has emphasized, "'flexible use' would both promote efficient use of spectrum . . . and encourage the development of new services." See Letter from the Honorable Larry Irving to Congressman Edward J. Markey, March 10, 1994.

<sup>5/</sup> See Comments of the National Association of Broadcasters and the Association for Maximum Service Television ("Broadcasters") at 7-13; Comments of the Association of Local Television Stations, Inc. ("ALTV") at 15-17; Comments of Cox Broadcasting Inc, Paxson Communications Corporation, and Media General Inc. ("Joint Commenters") at 8-10; Comments of Information Technology Information Council ("ITT") at 6-7.

of gross revenues.<sup>6/</sup> Setting fees at this level will encourage broadcasters to develop innovative uses of the digital spectrum and to respond to audience demand for services.

Respectfully submitted,

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<sup>6/</sup> See Broadcasters Comments at 17 (suggesting that Commission set a rate of two percent of gross revenues beginning two years after revenue is received for a service); ALTV Comments at 17 (urging Commission to adopt fee of no more than 1% of gross revenues); Joint Commenters Comments at 6 (advocating 1% interim period fee that would not take effect for at least two years); ABC Comments at 14 (recommending a fee of 1% or less under gross revenue formula).